



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

**Second Amended First and Final Account and Report of Conservator, Petition for
 Its Settlement, for Attorney Fees and Discharge of Conservator of the Estate**

DOD: 4-17-13		KATINA SAPIEN LOZANO PAULEY , Conservator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 2-10-14, 3-4-14</u> 1. Petitioner requests distribution to herself as the sole beneficiary pursuant to the decedent's will via declaration under Probate Code §13100. However, the will devises the decedent's estate to the trust. Therefore, the trust is the successor in interest pursuant to Probate Code §13006(a). It does not appear that the estate can be distributed as prayed.
		Account period: 9-19-11 through 12-16-13	
		Accounting: \$ 102,960.95	
		Beginning POH: \$ 37,268.63	
		Ending POH: \$ 17,668.83	
Cont. from 021014, 030414		(\$15,668.83 cash plus \$2,000.00 personal property (household) items)	
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<input checked="" type="checkbox"/>	Verified		
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		Conservator: Waives	
		Attorney: \$7,295.00 (per declaration) (Note: \$8,874.83 has already been paid pursuant to court order 6-4-12.)	
		Petitioner prays for an order as follows:	
		1. Notice of Hearing of this account, report, and petition be given as required by law;	
		2. Settling and accepting this account and report;	
		3. Authorizing payment of \$7,295.00 to Joanne Sanoian for her services to the petitioner and the conservatorship estate during this account period, and authorizing withdrawal of \$4,609.97 from Chase blocked account xxx5483 and \$2,685.03 from Chase account xxx6758 (total \$7,295.00) in certified funds payable to Joanne Sanoian;	
		4. After payment of the above sums, the Court authorize and direct Katina Sapien Lozano Pauley, Conservator of the Estate, to close Chase Bank blocked account ending in #5483 and deposit the remaining balance into Chase Bank checking account #6758;	
		5. The Court authorize and direct Katina Sapien Lozano Pauley to distribute the funds remaining in Joanne Sanoian's Client Trust Account into Chase Bank checking account #6758; and that on filing of proper receipts, Petitioner be discharged as conservator of the person and estate;	
		6. That surety on Petitioner's bond be discharged upon filing of an ex parte order for final discharge; and	
		7. For such other orders as the Court deems proper.	
		Reviewed by: skc	
		Reviewed on: 3-26-14	
		Updates:	
		Recommendation:	
		File 2 – Lozano	

Petition to Instruct Trustee as to Distribution of Assets

Peter Tym DOD: 2-23-13		CENTRAL CALIFORNIA CONFERENCE OF SEVENTH-DAY ADVENTISTS , Trustee, is Petitioner. Petitioner states the Peter & Doris Tym 2000 Family Charitable Remainder Unitrust was created between Petitioner as trustee and Peter and Doris Tym as settlors or donors. The trust agreement provides as follows: <ul style="list-style-type: none"> • Confirms donors' transfer of certain parcels of real property to the trustee • Defines "unitrust percentage" to be the amount used to determine the "unitrust amount" and states the "unitrust percentage" shall be 6.18% • States the "unitrust recipients" shall be Peter and Doris Tym and their children, Ardyth B. Price, Sharon M. Foley, and Bonnie Lea J. Corson • States that at the end of the period described in Paragraph 6, the then-remaining principal and income of the trust shall be distributed free of trust to Petitioner • States that commencing January 1 of the year after the parcels referred to in above are sold by the trustee, the "unitrust amount" shall be an amount equal to the "unitrust percentage" (6.18%) multiplied by the net fair market value of the trust assets value as of the first day of each calendar year, adjusted as otherwise provided for in the trust agreement (not applicable to this petition) • States the trustee shall pay the "unitrust amount" each taxable year of the trust in monthly installments at the end of each month, and also states that the installments are to be paid to or applied for the benefit of the donors, or the survivor of them, during their lifetimes, and upon both of their deaths, these installments are to be paid in equal shares to or for the benefit of the unitrust recipients (the donors' daughters) living at the time of such distribution. 	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 2-25-14</u>	
Doris Tym DOD: 4-2-09				
Cont. from 022514				
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SEE ADDITIONAL PAGES

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Petitioner states that by 10-3-2000, the trustee had completed the sales of real property and on 1-31-01 began paying the unitrust amount on a monthly basis to the donors until 3-31-09. Doris Tym died on 4-2-09. Thereafter, commencing 4-30-09, Petitioner paid the monthly installments to Peter Tym until 1-31-13. Peter Tym died on 2-23-13.

Petitioner states that in the meantime, in the first few months of 2010, after Doris' death, Les Palinka, Peter Tym's independent legal counsel (also nephew) contacted Petitioner's legal counsel Grant N. Mitchell by phone and informed him that Mr. Tym wished to have the entire corpus of the trust be distributed free of trust to Petitioner as the charitable beneficiary of the trust immediately upon his death, without any portion of the unitrust amount being paid to or for the benefit of his daughters. Mr. Palinka asked Mr. Mitchell if there was something Mr. Tym could do to carry out his wishes. Mr. Mitchell informed Mr. Palinka that he would review the document.

On or about 4-20-10, Mr. Mitchell contacted Mr. Palinka and informed him that pursuant to his review, it appeared that each donor reserved the right to revoke and terminate the interests of any other unitrust recipient in his or her one-half interest. If either donor exercised this testamentary power of revocation, then at that donor's death, that donor's one half interest in the unitrust amount was to be distributed to the remaining unitrust recipient, if any, whose interests were not revoked, and if none, to Petitioner, free of trust, as the charitable beneficiary. The trust also states that a donor who is a current income recipient retains the right to direct the trustee to distribute an undivided percentage of trust assets on the last day of any taxable year to qualified exempt organizations. Petitioner is and at all times has been a qualified exempt organization as defined in the trust.

Mr. Mitchell expressed his opinion that the term "an undivided percentage" included 100% and stated that he was not advising either Mr. Palinka or Mr. Tym to take either or both of these actions; he was only responding to the inquiry of options under the agreement.

About one year later, Mr. Tym executed a Last Will and Testament which revokes and terminates the interests of any and all other unitrust recipients set forth in the trust agreement, and states that Mr. Tym was specifically, intentionally, and knowingly directing that the trustee immediately distribute Mr. Tym's one half interest in the trust corpus to Petitioner.

Petitioner states the effect of the will was to require Petitioner as trustee to distribute Mr. Tym's one half interest in the trust corpus to Petitioner as the charitable beneficiary and to use the remaining trust corpus (Doris Tym's one half interest) to or for the benefit of Sharon M. Foley and Bonnie Lea J. Corson (Ardyth M. Price having previously died), and upon their deaths, to distribute the remaining trust principal to Petitioner as the charitable beneficiary.

SEE ADDITIONAL PAGES

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On 5-9-11, Mr. Palinka asked Mr. Mitchell to prepare and send Mr. Palinka a form of instruction letter whereby Mr. Tym could direct Petitioner as trustee to distribute 100% of the remaining trust assets to Petitioner as the charitable beneficiary on the last day of any trust taxable year in which Mr. Tym's death occurred. On 6-23-11, Mr. Mitchell sent Mr. Palinka a form of instruction letter and expressly informed him that it was Petitioner's understanding that Mr. Palinka was acting as Mr. Tym's attorney and that Mr. Mitchell was not acting as Mr. Tym's attorney in that matter; that Mr. Mitchell made no representations whatsoever as to what tax or other effect Mr. Tym's execution of the instruction letter may or may not have, etc.

Mr. Palinka did prepare such an instruction letter and reviewed same with Mr. Tym on 8-8-11 regard to the potential consequences of executing it. Mr. Tym expressed his desire to execute the instruction letter and did so. Mr. Palinka advise Mr. Mitchell of these facts and that he was sending the instruction letter to Mr. Mitchell via US Mail, which Mr. Mitchell received 8-10-11.

The effect of the instruction letter was to require Petitioner as trustee on the December 31 following Peter Tym's death to distribute to Petitioner as charitable beneficiary of the trust and free of trust the remaining one half interest in the trust income and principal not covered by Peter Tym's exercise of his testamentary power of revocation in his will.

On 1-1-13, and continuing through the present time, the trust corpus has consisted entirely of cash, and on 1-1-13 the cash totaled \$246,888.55. On or about that date, pursuant to the trust agreement, the trustee multiplied that amount by 6.18% (the unitrust percentage) to arrive at a figure of \$15,257.71 (the unitrust amount), which divided by 12 determines the monthly installment of \$1,271.48 paid to Peter Tym on 1-31-13.

Shortly after Mr. Tym's death on 2-23-13, and pursuant to the instructions in his will, Petitioner subtracted Mr. Tym's one half interest in the unitrust amount leaving a remaining unitrust amount monthly installment balance of \$635.74 to be divided equally between the two surviving daughters for the remaining 11 months.

Although Mr. Tym's will directed Petitioner to distribute to itself Peter Tym's one half interest upon his death, Petitioner has not distributed any portion or income thereon pending instructions from this Court. Also, although Mr. Tym's instruction letter directed Petitioner to distribute to itself, as the charitable beneficiary of the trust and free of trust on 12-31-13 the remaining one half interest in the trust principal and income not affected by Mr. Tym's will, Petitioner has not made any distributions of that principal or income thereon pending instructions from this Court.

SEE ADDITIONAL PAGES

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Petitioner requests instructions directing Petitioner as trustee on how to distribute the principal and income in the trust. It is Petitioner's belief that the Court should:

- A. Make a finding that in calculating the monthly installment, as of 2-28-13, on the basis of one half of the trust corpus as valued on 1-1-13, and thereafter paying the sum of \$3,496.57 to the two living daughters, that Petitioner acted properly as trustee and fulfilled its obligations to make distributions to the two living daughters; and
- B. Instruct Petitioner that Petitioner as trustee should forthwith distribute free of trust the entire remaining trust estate to itself as the charitable beneficiary.

Petitioner prays for an order instructing the trustee with regard to the proper administration of the trust with respect to the matters alleged herein, for costs herein, and for such other orders as the Court may deem proper.

Memorandum of Points and Authorities also provided.

1A Louis Brosi, Sr. (Trust)

Case No. 07CEPR01213

Atty David M. Gilmore and Ryan M. Janisse (for Cindy Snow Henry – Beneficiary – Petitioner)

Atty Armo, Lance (for Robert Snow)

Atty Paul Franco (for Louis Brosi, III)

Atty Wilson, Joshua G. (of Bakersfield, for Louis Brosi, Jr.)

Notice of Motion and Motion to Compel Performance Under Settlement Agreement

		CINDY SNOW HENRY , Trust beneficiary, filed Notice of Motion and Motion to Compel Performance Under Settlement Agreement on 3-15-11. The petition seeks to have the court order LOUIS BROSI, III carry out the acts necessary to partition the property into three parcels anticipated and directed by the settlement reached 3-5-09. LOUIS BROSI, JR. filed Opposition on 4-28-11 stating that new issues have arisen since the settlement. Minute Order 1-2-13: Mr. Wilson is appearing as counsel for Louis Brosi, Jr. Counsel requests a continuance. The Court sets a Settlement Conference for 2/4/13. Parties are directed to submit their settlement conference briefs along with courtesy copies for the Court by 1/30/13. Mr. Wilson is directed to submit any further objections by 1/30/13. The Court indicates to all counsel that it will entertain any order presented upon consent of the parties. Mr. Franco is directed to submit an order prior to 2/4/13 for the purpose of expediting the County process. Continued to 2-4-13 at 10:30am in Dept 303. Set on 2-4-13 at 10:30am in Dept 303 for Settlement Conference Re: Issue of Removing Louis Brosi, Jr.	NEEDS/PROBLEMS/COMMENTS: Previously, there were four (4) separate matters on calendar: Page A: Ms. Henry's Motion filed 3-15-11 Page B: Court Trial (Previously: Status Conference Re: Lot Split & Related Matters) Page C: Ms. Henry's Petition filed 11-5-12 Page D: Settlement Conference Re: Issue of Removing Louis Brosi, Jr. (per Min Order 1-2-13 of Cindy Henry's Motion filed 3-15-11, Page 2A) Note: CINDY SNOW HENRY filed a new Petition to Remove Trustee; Appoint Public Administrator as Trustee; Require Trustee Correct Title; and Compel Trustee to Account on 11-5-12 (Page 1C). Update: On 3-3-14, the Court made orders in connection with Page C (Ms. Henry's Petition filed 11-5-12). Therefore, that matter was not continued. However, no orders have been submitted for signature. 1. The Court may require updated information regarding whether Petitioner intends to pursue a ruling on <u>this petition</u> with reference to the new petition filed 11-5-12 and orders made on 3-3-14.
Cont. from 121012, 010213, 020413, 030413, 031213, 041813, 051713, 062813, 081213, 091613, 102213, 112113, 120213, 121813, 012914, 030314			
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Citation			
FTB Notice			
Reviewed by: skc			
Reviewed on: 3-26-14			
Updates:			
Recommendation:			
File 1A - Brosi			